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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

18 CR 124 (JPO)

5 LEONARD MATHEWS,

6 Defendant.

7 -----x

8 New York, N.Y.
9 October 2, 2018
9:55 a.m.

10 Before:

11 HON. J. PAUL OETKEN,

12 District Judge
13 -And a Jury-

14 APPEARANCES

15 GEOFFREY S. BERMAN,

16 United States Attorney for the
17 Southern District of New York

18 JUSTIN V. RODRIGUEZ

DOMINIC GENTILE

19 EMIL BOVE

Assistant United States Attorneys

20 BRUCE K. KAYE

Attorney for Defendant

21 ALSO PRESENT:

22 SABRINA PARISI, USAO Paralegal

23 ELVIS COLE, NYPD

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(In open court; jury not present)

THE COURT: Good morning.

COUNSEL: Good morning, your Honor.

THE COURT: We received a note from the foreperson of the jury this morning. It's been marked Court Exhibit No. 4. It's from 9:42 this morning, and it just says: "Judge Oetken, good morning. All the jurors have arrived, and we have started to deliberate." Signed Juror 44, the foreperson.

And I understand that we're still having A/V issues with the larger screen, but the laptop is operative, as I understand it, and there is a sheet of instructions, just to be clear, for the jury about how they're able to view exhibits on the laptop.

Based on that, I think the sheet of instructions went back to the jury. Is that right?

MR. RODRIGUEZ: That's right, Judge.

THE COURT: Okay.

Is there another note?

THE DEPUTY CLERK: Yes.

THE COURT: Okay.

We just received another note, which will be Court Exhibit No. 5: "Judge Oetken, the jury has a question regarding elements (1) through (3) of racketeering activity for Counts One, Two and Three. It states that the government must prove that: (1) the enterprise existed; (2) the Bloods engaged

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1 in racketeering; (3) interstate commerce was affected.

2 "Do these apply to the Bloods generally or to the
3 specific alleged crimes/counts?"

4 MR. KAYE: Judge, before we get to this latest note,
5 was the Court going to respond substantively to that portion of
6 yesterday's note that requested a definition of racketeering?
7 I believe the jury said that they had some questions about
8 that.

9 THE COURT: Well, my understanding was that they said,
10 "We have some questions about the laws explained, specifically
11 related to the definition of racketeering. Who can clarify
12 this for us?" I didn't think that was a specific question. I
13 think this was the question. The note from this morning is the
14 question referred to in yesterday's note, I assume.

15 MR. KAYE: I know the Court is going to respond
16 substantively to this morning's note, but when the Court does
17 that, can the Court make it clear that this morning's note is
18 just in connection with that part of yesterday's note, so we
19 make sure that we respond substantively to yesterday's note?

20 THE COURT: Yes. I can say: "I'm assuming that the
21 question you referred to in yesterday's note is the same as the
22 one from today, but if there's something else from yesterday,
23 please ask that in another note."

24 MR. KAYE: Thank you.

25 THE COURT: Let me read today's note once again. The

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1 time was 10:00 o'clock, and it's Court Exhibit 5. I'll read it
2 again: "The jury has a question regarding elements (1) through
3 (3) of racketeering activity for Counts One, Two and Three. It
4 states that the government must prove that: (1) the enterprise
5 existed; (2) the Bloods engaged in racketeering; (3) interstate
6 commerce was affected.

7 "Do these apply to the Bloods generally or to the
8 specific alleged crimes/counts?"

9 Do you understand the question? I'm not sure I do.

10 MR. RODRIGUEZ: A couple of reactions, your Honor:

11 I think with respect to the first element, the
12 question of whether the enterprise existed, it should be made
13 clear to the jury that that is a question that does not rely
14 on, or is not dependent on, the specific violent crimes in aid
15 of racketeering charged. That's with respect to the first
16 element.

17 The second element, that the enterprise engaged in
18 racketeering activity or activities: Here, some of the
19 racketeering activities alleged include the violent crimes that
20 are at issue, specifically the attempted murder, a conspiracy
21 to commit murder of Isaac Toribio. Maybe that's sort of one of
22 the areas where they want clarification on, that it could be
23 both something that goes to the second element as well as the
24 fourth element, for example, in Counts One, Two and Three. But
25 I think the Court should also remind the jury that there are

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1 other racketeering activities alleged, such as the narcotics
2 trafficking and the attempted murder and conspiracy to commit
3 murder of Ciara Edwards, that are not the specific violent
4 crimes in aid of racketeering.

5 THE COURT: What about "interstate commerce was
6 affected"?

7 MR. RODRIGUEZ: Your Honor, can we actually take a few
8 minutes, just to make sure that we've got this entirely
9 correct?

10 THE COURT: Yes, why don't you. In fact, why don't I
11 give the parties a copy of the note, and you all can confer and
12 try to maybe come up with some language that I can review.
13 Does that make sense?

14 MR. RODRIGUEZ: Very good, your Honor. Yes.

15 THE COURT: I'll step off the bench, and Mr. Hampton
16 will bring you copies of the two notes that raise racketeering.

17 MR. KAYE: Okay.

18 MR. RODRIGUEZ: Thank you, Judge.

19 (Recess)

20 THE COURT: Give me a minute. I just want to retype
21 the version that you all are working from, and we can discuss
22 it.

23 Do you have the ability to email me this? No, right?

24 MR. RODRIGUEZ: Unfortunately, we don't, your Honor.

25 THE COURT: Okay.

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1 (Pause)

2 THE COURT: Just so we're clear on the record on what
3 everyone's position is, I'll read into the record what was
4 proposed to me, which I believe is something the parties do not
5 agree on the first sentence but do agree on the rest. Is that
6 right?

7 MR. RODRIGUEZ: Correct.

8 THE COURT: Here is what has been proposed in response
9 to the question about racketeering: "The first three elements
10 for Counts One, Two and Three relate to the government's
11 allegations regarding the activities of the Bloods gang in
12 general rather than the specific violent crimes alleged in
13 general. Specifically, for Counts One, Two and Three, the
14 government must establish:

15 "On element one, that there was a racketeering
16 enterprise;

17 "On element two, that the racketeering enterprise
18 engaged in at least one racketeering activity. And, here, the
19 activities are: Attempted murder, conspiracy to commit murder
20 and drug-dealing, as I defined those crimes;

21 "And on element three, that the activities of the
22 Bloods racketeering enterprise affected interstate commerce.
23 When you evaluate these elements you may consider all of the
24 evidence admitted during the trial."

25 Did I get that right?

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1 MR. KAYE: I admittedly don't have the language in
2 front of me.

3 MR. RODRIGUEZ: That was the proposal, your Honor,
4 yes.

5 THE COURT: Okay.

6 MR. KAYE: My objection to the first part of it is
7 that it seems as if the jury is looking at the distinction
8 between the umbrella nation, United Bloods Nation, and the
9 Gangsta Milla Bloods, which is undoubtedly the subject of this
10 prosecution. The UBN is not on trial; the local set and their
11 misconduct is on trial.

12 So to respond to the note by instructing the jury that
13 they can find racketeering acts within or against the umbrella
14 entity, I don't believe is appropriate. I'm not suggesting any
15 particular language to the Court or the government. I'm only
16 suggesting that it be made clear that their focus has to be the
17 evidence that they were given, and that evidence is of
18 racketeering acts and drug-dealing within that area of East
19 Kingsbridge Road, Creston, Morris, and Jerome. They have no
20 evidence as to any specific narcotics purchase or sale or
21 violent act that was ever committed by anyone associated within
22 the umbrella entity.

23 So my request is to make that very clear to the jury
24 that they are to consider the first three elements of the first
25 three charges with regard to the evidence they've been given as

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1 applied to the local set.

2 THE COURT: I don't really read the question as
3 focusing on that distinction so much as the distinction between
4 the specific crimes alleged, that is, the alleged attempted
5 murder of Toribio and whether that is what they're supposed to
6 be considering or any narcotics activity proven. I don't know
7 that any Bloods activity was established at trial other than
8 GMB, Gangsta Milla Bloods, activity at all. So I don't know
9 that that is of salient distinction in terms of the question.

10 But I'll let you respond.

11 MR. KAYE: But the jury -- before
12 Mr. Rodriguez does -- has heard about the Bloods Nation, and in
13 my summation I did say, I'm sure the Bloods, as a group, have
14 engaged in all kinds of horrible crimes, but that's not what
15 we're talking about here, we're talking about -- and I tried to
16 focus them on what's happening in that part of the Bronx.

17 So it is a potential area of confusion for them, as to
18 whether or not they should be considering any acts of the
19 broader entity.

20 THE COURT: Okay.

21 MR. RODRIGUEZ: Your Honor, I agree with you.

22 First of all, the government did not offer any broad
23 evidence of violent crimes committed by the Bloods nationwide.
24 For example, no one took the stand and testified to a hundred
25 murders committed by the United Bloods Nation last year

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1 throughout the United States. That's absolutely not what
2 happened.

3 I agree that the question here is focused on the
4 enterprise versus the predicates of the violent crimes alleged.
5 I don't think there's anything in the question that's trying to
6 draw this distinction between the Bloods and the Gangsta Milla
7 Bloods.

8 I'd also remind the Court, as the Court is well aware,
9 that the entirety of the Court's charge didn't draw this
10 distinction between the Bloods and the Gangsta Milla Bloods.
11 That's because the Bloods is the alleged enterprise in the
12 indictment. So to start drawing the jury's attention to that
13 now, we think, would cause great confusion, and it doesn't seem
14 to be the actual issue that they're focused on.

15 THE COURT: Yes, I agree with that.

16 MR. KAYE: Just for the record, I did, at the
17 beginning of the trial, make certain jury charge requests that
18 the word "Bloods," meaning the umbrella entity, be deleted from
19 the charge and that we instead focus on the local set.

20 THE COURT: Okay. Fair enough.

21 I still want to tweak the language, I think. That's
22 because it's still a little confusing because I think you have
23 to distinguish between the actor and the activities. With
24 respect to the actor, the answer is clearly the Bloods in
25 general, but as to the activities, it's a hybrid, so some of

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1 the predicates are things that were arguably the basis of the
2 crimes themselves. It's a little confusing because it's like a
3 crime within a crime of the element.

4 I was thinking of saying: "The first three elements
5 for Counts One, Two and Three relate to the government's
6 allegations regarding the Bloods gang, as opposed to the
7 activities of the Bloods gang, in general." And then provide
8 some clarity in the next sentences. I wasn't going to say,
9 "rather than the specific violent crimes," because I don't want
10 to divert their attention, because actually the specific crimes
11 may be predicates under element two. So let me try this:
12 "Specifically, for Counts One, Two and Three, the government
13 must establish, on element one, that there was a racketeering
14 enterprise." "That there was."

15 "On element two" -- maybe I'll break this out -- "On
16 element two, the government must establish that the
17 racketeering enterprise engaged in at least one racketeering
18 activity. And, here, the activities alleged are attempted
19 murder, conspiracy to commit murder, and drug-dealing, as I
20 defined those crimes."

21 I was about thinking about adding a sentence here that
22 says: "If you find any of those beyond a reasonable doubt, you
23 have found the element of racketeering activity, whether or not
24 it is the same as one of the alleged violent crimes alleged."
25 I'm trying to think of a better way to say that that's not more

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1 confusing than helpful, because here I think the possibility is
2 narcotics activity, whether it's alleged or not, of the Bloods,
3 whether it's part of what's specifically alleged as to
4 Mr. Mathews or not. The attempted murder of Toribio and the
5 attempted murder of the alleged attempted murder of Edwards,
6 is, I think, what was argued as possible predicates for
7 racketeering activity.

8 MR. RODRIGUEZ: Your Honor, we're in agreement with
9 the Court entirely as far as the proposal so far.

10 In terms of a possible clarifying sentence to insert
11 here, we propose something like the following, with respect to
12 the second element: "On this second element, you may consider
13 the evidence relating to the attempted shooting of Isaac
14 Toribio when you consider this element, as well as any other
15 evidence relating to separate acts of violence and drug-dealing
16 by the Bloods that was admitted during the trial," something
17 like that.

18 THE COURT: Could you repeat that one more time?

19 MR. RODRIGUEZ: Absolutely. "On this second element,
20 you may consider the evidence relating to the attempted
21 shooting of Isaac Toribio when you consider this element" --

22 THE COURT: "You may consider -- when you consider
23 this element." Okay.

24 MR. RODRIGUEZ: -- "as well as any other evidence
25 relating to separate acts of violence and drug-dealing" --

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1 THE COURT: Hold on. "Relating to any"?

2 MR. RODRIGUEZ: How about: "As well as any other
3 evidence relating to additional acts of violence and
4 drug-dealing by the Bloods that was admitted during the trial."

5 THE COURT: "Any additional acts of violence" -- is it
6 "any violence" or doesn't it have to be "attempted murder and
7 conspiracy to murder"?

8 MR. RODRIGUEZ: The Court's correct; yes.

9 THE COURT: "Any additional acts of attempted murder
10 or conspiracy to murder." And where did it go from there?

11 MR. RODRIGUEZ: "And drug-dealing by the Bloods."

12 THE COURT: "Or drug-dealing"?

13 MR. RODRIGUEZ: "Or drug-dealing by the Bloods that
14 was admitted during the trial."

15 THE COURT: And then for Count Three: "The government
16 must prove that the activities of the Bloods racketeering
17 enterprise affected interstate commerce"?

18 MR. RODRIGUEZ: And I think, your Honor, it might be
19 worth reiterating at this point to the jury, "When you evaluate
20 these elements, you may consider all of the evidence admitted
21 during the trial."

22 THE COURT: Mr. Kaye?

23 MR. KAYE: In reverse order. I don't think it should
24 say with regard to the Bloods, when they're determining the
25 interstate commerce element; that should be with regard to the

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1 Gangsta Milla Bloods.

2 Also, I think the Court is leaving out the conspiracy
3 and the assault. Those arguably also would be predicate acts.
4 I don't know if you wanted to include those or not.

5 THE COURT: Is the assault, aiding and abetting
6 assault, also a possible predicate act?

7 MR. KAYE: I believe it is.

8 MR. RODRIGUEZ: Your Honor, just to be very clear,
9 when we're talking about -- when I mentioned predicate acts
10 before, I was referring to element four of Counts One, Two and
11 Three, the violent crimes in aid of racketeering.

12 So the assault is a violent crime in aid of
13 racketeering. It is not, however, a racketeering activity,
14 because the phrase is "acts involving murder." So --

15 THE COURT: Right. So it's conspiracy to commit
16 murder and --

17 MR. RODRIGUEZ: Attempted murder.

18 THE COURT: -- attempted murder but not --

19 MR. RODRIGUEZ: Right.

20 THE COURT: That's what I've covered.

21 MR. RODRIGUEZ: Correct.

22 MR. KAYE: Okay. I understand.

23 And then with regard to drug-dealing, are we going to
24 just tell the jurors that any acts of drug-dealing,
25 essentially, that they've heard evidence of, or any acts of

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1 drug-dealing committed by the defendant or by Bigz Milla? For
2 example, they've only heard of drugs being sold by the
3 defendant, and then on two occasions, he told one of the buyers
4 that "Bigz Milla has my work."

5 THE COURT: But I think all they need to find is that
6 it's of the Bloods for it to be racketeering activity by that
7 enterprise.

8 MR. KAYE: So can you just read that language?

9 THE COURT: Yes.

10 "On element two, the government must prove that the
11 racketeering enterprise engaged in at least one racketeering
12 activity. And, here, the activities are attempted murder,
13 conspiracy to commit murder, and drug-dealing, as I defined
14 those crimes.

15 "On the second element, you may consider the evidence
16 relating to the attempted shooting of Isaac Toribio when you
17 consider this element, as well as any other evidence relating
18 to additional acts of attempted murder or conspiracy to commit
19 murder or drug-dealing by the Bloods that was admitted during
20 the trial."

21 MR. KAYE: Okay. Thank you.

22 (Pause)

23 THE COURT: Let me make sure we're all on the same
24 page, by reading the whole instruction.

25 "The first three elements for Counts One, Two and

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1 Three relate to the government's allegations regarding the
2 Bloods gang in general. Specifically, for Counts One, Two and
3 Three, the government must establish:

4 "On element one, that there was a racketeering
5 enterprise;

6 "On element two, the government must establish that
7 the racketeering enterprise engaged in at least one
8 racketeering activity. And, here, the alleged activities are
9 attempted murder, conspiracy to commit murder, and
10 drug-dealing, as I defined those crimes. On the second
11 element, you may consider the evidence relating to the
12 attempted shooting of Isaac Toribio as well as any other
13 evidence relating to additional acts of attempted murder or
14 conspiracy to commit murder by the Bloods or drug-dealing by
15 the Bloods that was admitted during the trial;

16 "On element three, the government must establish that
17 the activities of the Bloods as a racketeering enterprise
18 affected interstate commerce. When you evaluate these
19 elements, you may consider all of the evidence admitted during
20 the trial."

21 Does that work?

22 MR. RODRIGUEZ: That works for the government, your
23 Honor. And if the Court were inclined to provide the jury with
24 that written instruction and send it back to the jury, the
25 government would have no objection to that and would actually

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1 think that might be most helpful for them rather than just
2 bringing them out and reading it to them.

3 THE COURT: Mr. Kaye?

4 MR. KAYE: I have no preference on whether they get it
5 in writing or otherwise.

6 THE COURT: Okay. So, then, we just send it back and
7 not bring them out?

8 MR. RODRIGUEZ: Yes, Judge.

9 MR. KAYE: Except the Court said that it was going to
10 ask them if this note from this morning satisfied the note from
11 the end of the day yesterday with regard to the definition,
12 just to be certain we were responding to the note from
13 yesterday.

14 MR. RODRIGUEZ: Your Honor, our view is that they've
15 shown that they know what to do when they have questions, to
16 send the Court a note. So if they did have further questions,
17 I think it's clear at this point that they would just send a
18 note with those questions.

19 MR. KAYE: Judge, nothing is clear unless we ask them
20 if they're clear. I think we're required, under the law, to
21 respond to each note. So, as it stands presently, the
22 definitional request from the note we received at the end of
23 the day yesterday has not directly been responded to.

24 THE COURT: Okay. I'm fine bringing them out just so
25 it's clear. If I do bring them out, do you want me to read

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1 this and also send it back?

2 MR. KAYE: Yes.

3 MR. RODRIGUEZ: Yes, Judge. Thank you.

4 THE COURT: Okay. Let's bring them out.

5 (Jury present)

6 THE COURT: Good morning, ladies and gentlemen.

7 JURY MEMBERS: Good morning.

8 THE COURT: I know you've been deliberating now, and I
9 thank you for your patience. I just want to touch base with
10 you about a couple of the notes that you sent out and do my
11 best to respond.

12 I did receive your note yesterday evening, around
13 5:30, just indicating that you would like to break for the day.
14 You're welcome to send out a note whenever you want to break
15 for the day. If you want to go a little past 5:00, that's
16 fine, but if anyone has any obligations, you should break, out
17 of respect for any obligations people have. If you want to go
18 a little later, you're also welcome to but only if everyone is
19 comfortable with that and able to do it.

20 We did our best to get a computer that works and give
21 you instructions on that. Does it work now?

22 JURY MEMBERS: Yes.

23 THE COURT: Did you get a larger monitor in there yet.

24 JURY MEMBERS: Yes.

25 THE COURT: Great. We're trying to help with that.

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1 And we got you the highlighters?

2 JURY MEMBERS: Yes.

3 THE COURT: Great.

4 The last question you asked yesterday was: "We have
5 some questions about the law as explained, specifically
6 relating to the definition of racketeering. Who can clarify
7 this for us?" And I indicated to you that if you had
8 additional questions, you should let me know, and then I got
9 the question this morning.

10 The first thing I want to say is: I'll get to the
11 question you asked this morning in a second. As to the
12 question you asked this morning -- and I will ask the
13 foreperson if you could respond -- I want to confirm that there
14 wasn't some additional question but that this was the question
15 you referred to last night?

16 THE FOREPERSON: Yes.

17 THE COURT: Okay. Great.

18 If there's any additional question that I don't
19 respond to, please let me know in another note and I will do my
20 best to answer it.

21 So now the question that I got this morning says:
22 "The jury has a question regarding elements one through three
23 of racketeering activity for Counts One, Two and Three. It
24 states that the government must prove that (1) the enterprise
25 existed; (2) the Bloods engaged in racketeering; (3) interstate

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1 commerce was affected."

2 "Do these apply to the Bloods generally or to the
3 specific alleged crimes/counts?" Signed the foreperson.

4 I'm going to do my best to respond. And, also, what
5 I'm reading to you, I'm going to send a copy back so you have
6 it to supplement the other instructions, since you've asked
7 this question. So if you don't catch every word that I say
8 right now, you'll have a copy.

9 The first three elements for Counts One, Two and Three
10 relate to the government's allegations regarding the Bloods
11 gang in general. Specifically, for Counts One, Two and Three,
12 the government must establish:

13 On element one, that there was a racketeering
14 enterprise;

15 On element two, the government must establish that the
16 racketeering enterprise engaged in at least one racketeering
17 activity. And, here, the alleged activities are attempted
18 murder, conspiracy to commit murder, and drug-dealing, as I
19 defined those crimes. On the second element, you may consider
20 the evidence relating to the attempted shooting of Isaac
21 Toribio, also known as Ike, as well as any other evidence
22 relating to additional acts of attempted murder or conspiracy
23 to commit murder by the Bloods, or drug-dealing by the Bloods
24 that was admitted during the trial;

25 On element three, the government must establish that

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1 the activities of the Bloods racketeering enterprise affected
2 interstate commerce.

3 When you evaluate these elements, you may consider all
4 of the evidence admitted during the trial.

5 Again, I'll send this back with you. If you have any
6 additional questions, please feel free to put them in a note.

7 And we're going to have lunch brought in for you. I
8 think we got your lunch orders.

9 MR. KAYE: Can we approach on the side bench?

10 THE COURT: Yes.

11 (At the sidebar)

12 MR. KAYE: I think I have an additional request that I
13 forgot to give you, that we also include the "beyond a
14 reasonable doubt" language at some point in this charge. Maybe
15 you can say: "Everything that I have just instructed you, you
16 must find" --

17 THE COURT: "Each element"?

18 MR. KAYE: -- "establish beyond a reasonable doubt."

19 THE COURT: Any objection?

20 MR. RODRIGUEZ: No objection.

21 THE COURT: Okay, I'll do that. Thank you.

22 (In open court)

23 THE COURT: In answering your question just now, I
24 explained, for each of those elements that I referred to, "the
25 government must establish." And I just want to reiterate, when

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1 I say "the government must establish," it must do so beyond a
2 reasonable doubt. So for each of those elements, you must find
3 that the government has established beyond a reasonable doubt
4 the element.

5 All right? Thank you very much, folks. You may
6 continue your deliberation.

7 (Jury not present)

8 THE COURT: Anything else anybody needed to address?

9 MR. KAYE: Just if the Court is going to give the
10 jurors that latest instruction in a piece of paper, that the
11 reasonable doubt language be included on the paper.

12 THE COURT: Any objection?

13 MR. RODRIGUEZ: No, your Honor.

14 THE COURT: Okay. I will add that.

15 MR. KAYE: Thank you.

16 THE COURT: Okay.

17 You all are free to go and we'll let you know when you
18 need to come back. I'll be working here a few minutes.

19 MR. RODRIGUEZ: Thank you, Judge.

20 (Recess pending verdict)

21 THE COURT: So you all have seen the note asking about
22 the Ciara Edwards testimony?

23 MR. RODRIGUEZ: Yes, Judge.

24 MR. KAYE: Yes, your Honor.

25 THE COURT: And I understand that you have not reached

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1 agreement on what to send in?

2 MR. RODRIGUEZ: We had an agreement, your Honor, but
3 then, upon Mr. Kaye rereading the note, he decided that he no
4 longer wanted to abide by that agreement. We reached a set of
5 transcripts that we thought was fair and responsive, and now
6 Mr. Kaye would like to take a much more narrow view of what is
7 fair and responsive. I think his objection is to the beginning
8 of the government's proposal.

9 What the note is requesting is her testimony with
10 regards to her recollection of going to get the gun. So where
11 we started our proposed response is: Who told her to get the
12 gun and why. We think it's a natural place to start testimony
13 regarding her going to get the gun.

14 We've also included, because Mr. Kaye wanted it, his
15 cross-examination with respect to her lying in the grand jury
16 about that. We don't think, if we're going to take an overly
17 narrow view of what this note is requesting, that that would be
18 appropriate, but we agreed to it because we thought we had a
19 fair and responsive package of transcripts to propose, but that
20 doesn't seem to be the case.

21 But we think that what we've handed your Honor is
22 fair, it's responsive, it goes to all what the jury seems to be
23 asking for. So if your Honor is inclined to take a much more
24 narrow view, along the lines that Mr. Kaye is suggesting, then
25 we would propose eliminating the questioning about what she

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1 testified to in the grand jury, if we're going to limit it to
2 just her current recollection, reading this very narrowly, who
3 she went with and where she went.

4 THE COURT: Mr. Kaye?

5 MR. KAYE: Judge, all I'm asking is that on page 479,
6 we start at line 6, not at line 2. "What happened when DeJesus
7 showed up?" I don't think that that's necessary, that
8 conversation, because the government is still getting
9 conversation between the two, if we start at line 6.

10 Arguably, neither excerpt is directly relevant because
11 they're asking about going to get the gun. That's prior to
12 going to get the gun. And if we have to lose my
13 cross-examination regarding the grand jury, that's okay. Then
14 we can just both take a very narrow view of it.

15 THE COURT: So your only issue is with the lines
16 before line 6?

17 MR. KAYE: Right. We're in agreement generally -- I
18 completely agree that if you look at this narrowly, then
19 perhaps my cross on the grand jury is not directly responsive,
20 but I'm getting that, I'm willing to give up a little
21 something, but I don't think that 479, lines 2 to 5 needs to be
22 in there, because the government gets that. It's repeated
23 again on 479 from lines 6 to 9.

24 MR. RODRIGUEZ: Your Honor, if I'm hearing Mr. Kaye
25 correctly, his only proposal is that we start on 479 at line 6,

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1 which is me repeating or trying to clarify the previous answer,
2 so I think that's not a great place to start. But if we're
3 going to move this along and, as a result, not include
4 Mr. Kaye's cross-examination of Ms. Edwards about what she
5 testified to in the grand jury, then the government would have
6 no objection to that.

7 MR. KAYE: No, we are including that.

8 THE COURT: I thought you just said you would be
9 willing not to include the grand jury?

10 MR. KAYE: No, no, no. I said, originally, I could
11 understand both parties taking a narrow view, which might
12 exclude my cross of her on the grand jury but would also
13 exclude all of this. But I'm willing to put some of this, of
14 what the government wants in, to ensure that the grand jury
15 topic gets put in. My only objection was to having it read
16 twice, essentially, which is lines 2 to 5. If that's not
17 acceptable, then I'll take a closer look at it and I will see
18 what else, in a narrower view, I think is not directly
19 responsive to the note. That's fine too.

20 MR. RODRIGUEZ: Your Honor, just one more point on
21 this: The reason why I said starting where I would start, on
22 479, line 6, you've instructed the jury that the questions from
23 the lawyers are not evidence, and so they should get that prior
24 answer, which is in evidence.

25 I think it's clear that Mr. Kaye doesn't want it

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1 because it implicates his client, but this is a fair and
2 responsive set of transcripts to send back to the jury. We
3 should send it back so they can continue their deliberations.

4 THE COURT: I agree. The question is her recollection
5 of going to get the gun. I think this is responsive. So I
6 think this is the right set of materials to send.

7 MR. RODRIGUEZ: Thank you, Judge.

8 THE COURT: You have copies?

9 MR. RODRIGUEZ: I provided Mr. Hampton a copy. I'm
10 happy to provide another copy or however the Court wants --

11 THE COURT: Do you have a view as to whether it should
12 be 12 copies or one?

13 MR. RODRIGUEZ: Our thought on why it should be one is
14 just because we've sent one of the supplemental instruction, so
15 continuing a practice of sending additional materials, one
16 copy, back there.

17 THE COURT: All right. That's fine. We can send them
18 my copy.

19 MR. RODRIGUEZ: Thank you, Judge.

20 MR. KAYE: Does the Court have any thoughts on the
21 balance of the note, the 5:00 o'clock departure?

22 THE COURT: Just that I'll let them go at
23 5:00 o'clock --

24 MR. KAYE: Thank you.

25 THE COURT: -- which I assume means they're fine to

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1 come back tomorrow.

2 Okay. Thank you. We'll keep you posted.

3 MR. RODRIGUEZ: Judge, I'm sorry, should we put on the
4 record the specific transcript pages and lines that we are send
5 back?

6 THE COURT: Yes, we probably should.

7 You have them, right?

8 MR. RODRIGUEZ: I do.

9 It begins on page 478 of the transcript, line 24, and
10 it goes through page 480, line 14. That's the first excerpt.

11 The second excerpt begins on page 490, line 1, through
12 page 492, line 6.

13 The third excerpt begins on page 558, line 7, goes
14 through 559, line 9. There's an exchange with the Court that
15 is redacted. It resumes at 559, line 14, continues through
16 page 561, line 12. The.

17 The final excerpt begins on 598, line 16, and goes
18 through 599, line 12.

19 THE COURT: Okay. Thank you.

20 MR. RODRIGUEZ: Thank you, Judge.

21 (Recess pending verdict)

22 THE COURT: Are we ready to let the jury go?

23 MR. KAYE: The defense is ready.

24 THE COURT: All right.

25 MR. RODRIGUEZ: Yes, your Honor.

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1 THE COURT: All right.

2 (Jury present)

3 THE COURT: Good evening, ladies and gentlemen.

4 JURY MEMBERS: Good evening.

5 THE COURT: I just wanted to acknowledge that I did
6 receive your note from 3:00 o'clock today, asking for certain
7 testimony of the witness Ciara Edwards, and we provided a copy
8 of the testimony of that witness which I determined was
9 responsive to the question.

10 And it also said: "P.S. The jury would like to break
11 for the day at 5:00 p.m.," which is fine. And it is
12 5:00 o'clock, so I am going to let you go for the day, with a
13 reminder that we will continue tomorrow morning at the same
14 time. Try to come in around 9:15, definitely by 9:30 if you
15 can. And, once again, if you would please not discuss the case
16 tonight and not begin deliberations until all 12 of you are
17 present in the jury room, at which time the foreperson can just
18 send out a note saying, "We are all here, and we're beginning
19 to deliberate." Please make sure you don't deliberate before
20 that time. All right?

21 Thank you, everybody, for your patience and hard work
22 in deliberating. And we'll see you all tomorrow morning. Have
23 a good night.

24 JUROR: Good night.

25 (Jury not present)

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1 THE COURT: Have a good night, everybody.

2 MR. KAYE: You too, your Honor.

3 MR. RODRIGUEZ: Thank you.

4 (Adjourned to October 3, 2018 at 9:30 a.m.)

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